IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 26402 of 2007(R)

PETITIONER:

M.P.SOSAMMA,W/O. K.MATHEW,
PAYYANIKKAL HOUSE, PIRAMADOM PO, MEMURI VILLAGE,
MUVATTUPUZHA TALUK.

BY ADV. SRI.N.K.KARNIS

RESPONDENTS:

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1. SUB DIVISIONAL MAGISTRATE,
MUVATTUPUZHA.

2. THE VILLAGE OFFICER,MEMURI VILLAGE,
MUVATTUPUZHA TALUK.

3. SUB INSPECTOR OF POLICE,
RAMAMANGALAM POLICE STATION, RAMAMANGALAM.

4. P.R.THANKAPPAN, POTTATHADATHIL HOUSE,
MEMURI VILLAGE,MUVATTUPUZHA TALUK.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.26402 of 2007

Dated this the 5th day of September, 2007

J U D G M E N T

The petitioner is aggrieved by an order passed under Section 138 Cr.P.C, which contains a direction that 3 Pongilyam trees standing in the property of the petitioner and leaning dangerously over the residential building of a neighbour be cut and removed. Ext.P4 is the copy of the impugned order. The petitioner claims to be aggrieved by that order.

2. What is the grievance ? A conditional order was admittedly issued directing cutting and removal of the trees in question. Such conditional order was passed after securing the report of the village officer. The counter petitioner shown in the conditional order and in the impugned order Ext.P4 is Mathew, the husband of the petitioner. The order passed by the Sub Divisional Magistrate shows that the husband of the petitioner was given due notice. He had entered appearance. But he had not filed any objections against the conditional order. Ext.P4, the impugned order narrates in detail the sequence of events which took place. After the passing of the conditional order, the husband of the petitioner went on taking time.

He did not file any objections. Accordingly the impugned order was passed on 1.9.07 by the Sub Divisional Magistrate.

3. What is the grievance of the petitioner now ? The petitioner submits that her husband is not and she is the owner of the property in question. Admittedly the husband and wife are residing together in matrimony. The contention of the petitioner is that she being the owner of the property, it was not enough if notice were given to her husband. Notice must have been issued to her in her name. She must have been granted opportunity to enter appearance and raise objections. The impugned order is bad for this short reason, it is prayed.

4. I have gone through the impugned order. The Sub Divisional Magistrate had issued the conditional order assuming that the husband of the petitioner is the person responsible for cutting and removing the trees in question which allegedly were leaning dangerously over the residential building of the neighbour, ie. the 4th respondent. No objection whatsoever was raised by the husband of the petitioner who had sufficient notice, who had entered appearance and who had kept on taking time for filing his objections.

5. I am not oblivious to the arguments raised that notice must be given to the owner of the property before any order under

Section 138 Cr.P.C is passed. But I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. Any and every error committed by a subordinate court will not ip so facto persuade this Court to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C or Article 226/227 of the Constitution of India. Has justice failed ? Is there miscarriage of justice ? Is there abuse of process of the Court ? These are the crucial considerations that should weigh with the Court while contemplating the invocation of the extraordinary inherent or constitutional jurisdiction vested in this Court.

6. The husband and wife were living together under the same roof. The neighbour assumed, even if it be wrongly, that the property belongs to the husband. Trees were leaning dangerously over the residential building of the neighbour. He therefore initiated proceedings under Section 133 Cr.P.C against the husband. The name of the husband was shown as the respondent. The Sub Divisional Magistrate after due enquiry issued a conditional order under Section 133(1) Cr.P.C against the husband. The husband did enter appearance but did not raise a contention that he is not the owner of the property and that his wife is the owner and that notice must be given to her. In the total absence of any objections raised, even after

repeated opportunities were given to the husband, the Sub Divisional Magistrate assuming that there is no valid objection, proceeded to make the conditional order absolute.

7. I repeat that technically notice must have been issued to the petitioner if the property belongs to her. But in the facts and circumstance of this case, I am certainly of the opinion that the non issue of notice specifically in the name of the petitioner even assuming that the property stands in the name of the petitioner has not resulted in any failure/miscarriage of justice. The mere fact that the addressee in the notice was not the petitioner but the notice was addressed to the husband of the petitioner cannot in these circumstances persuade this Court to invoke the jurisdiction under Section 482 Cr.P.C or Article 226/227 of the Constitution, which is to be invoked sparingly and in exceptional cases in aid of justice.

8. The learned counsel for the petitioner submits that the petitioner's husband had filed Ext.P3 objections against the conditional order. The impugned order of the Sub Divisional Magistrate does clearly show that on 10.08.07, the petitioner's husband was absent and no objections were filed. In these circumstances, the contention that Ext.P3 was filed cannot also be held to be of any substance.

9. That the trees were dangerously leaning over the property of the neighbour is seen urged before the Sub Divisional Magistrate and the Sub Divisional Magistrate, it is seen, was satisfied with the truth of that assertion. The trees in question are Pongilyam trees which have no fruit/product value also. In any view of the matter, I am not persuaded to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C or Article 226/227 of the Constitution in favour of the petitioner merely to satisfy the technical contention that notice was not addressed in the name of the petitioner. She undoubtedly had notice and her husband had entered appearance.

10. The challenge against Ext.P4 must, in these circumstances, fail. The jurisdiction under Section 482 Cr.P.C or Article 226/227 of the Constitution does not deserve to be invoked at all. This Writ Petition is accordingly dismissed.

(R.BASANT, JUDGE)

rtr/-

true copy PA To Judge